

JOSEPH P. RUSSONIELLO (CABN 44332)  
 United States Attorney  
 JOANN M. SWANSON (CABN 88143)  
 Chief, Civil Division  
 NEILL T. TSENG (CABN 220348)  
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
 San Francisco, California 94102-3495  
 Telephone: (415) 436-7155  
 FAX: (415) 436-6748  
 neill.tseng@usdoj.gov

Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

ERNEST C. WHEELER,	)	No. C 08-01738 SBA
	)	
Plaintiff,	)	FEDERAL DEFENDANT'S ANSWER TO
	)	PLAINTIFF'S COMPLAINT
v.	)	
	)	
MICHAEL CHERTOFF, Secretary,	)	
Department of Homeland Security, Federal	)	
Emergency Management Agency	)	
	)	
Defendant.	)	

COMES NOW R. David Paulison, Administrator of the Federal Emergency Management Agency, a component of the Department of Homeland Security and on behalf of the Department of Homeland Security's Secretary Michael Chertoff (hereinafter "FEMA"), by the undersigned counsel, and hereby responds to Plaintiff's Complaint as follows:

1. Paragraph No. 1 of Plaintiff's Complaint contains conclusions of law and appears to be a description of the plaintiff's action to which no answer is required. To the extent an answer is deemed necessary, FEMA denies the allegations in paragraph No. 1.

2. FEMA admits the allegations in paragraph No. 2 of Plaintiff's Complaint.

3. Paragraph No. 3 of Plaintiff's Complaint contains a description of the party

1 plaintiff and no answer is required; to the extent that an answer may be required, FEMA states  
2 that it is without knowledge or information sufficient to form a belief as to the truth or falsity of  
3 the allegations contained therein, and therefore denies same.

4 4. There are two paragraphs numbered "4" in Plaintiff's Complaint. The first  
5 paragraph No. 4 of Plaintiff's Complaint is the Plaintiff's statement of venue that contains  
6 conclusions of law to which no answer is required; to the extent that a response is deemed  
7 necessary, FEMA states that it is without knowledge or information sufficient to form a belief as  
8 to the truth or falsity of the allegations contained in paragraph No. 4 and therefore denies same.

9 5. The second paragraph No. 4 of Plaintiff's Complaint, under heading "Allegations  
10 Common to all Claims for Relief," incorporates by reference all allegations contained in  
11 paragraphs 1 through 3 of Plaintiff's Complaint as if fully set forth therein. No answer is  
12 required to the second paragraph No. 4, but to the extent an answer may be required, FEMA  
13 incorporates by reference as if set forth fully herein, all of its responses to paragraphs numbered 1  
14 through 3 of Plaintiff's Complaint.

15 6. FEMA admits the first two sentences in paragraph No. 5 of Plaintiff's Complaint.  
16 The third sentence in paragraph No. 5 of Plaintiff's Complaint contains conclusions of law to  
17 which no answer is required. To the extent that an answer is required, FEMA denies the same,  
18 except to admit Michael Chertoff is the Secretary of the Department of Homeland Security and  
19 FEMA is a component of the Department of Homeland Security.

20 7. FEMA denies the allegations contained in paragraph No. 6 of Plaintiff's  
21 Complaint except to admit that between November 26, 2001 and March 2005, FEMA deployed  
22 the plaintiff approximately 12 times to disasters and deployed or activated Mr. Wheeler  
23 approximately three times for training including disaster specific training and Resolving  
24 Conflicts, that Mr. Wheeler completed Emergency Management Institute courses, "Incident  
25 Command System Curricula" in 2003 and "Hospital Emergency Response Training (HERT) for  
26 Weapons of Mass Destruction (WMD) Events Train the Trainer-Pilot 3.1 CEU" in 2004.

27 8. FEMA denies the allegations contained in paragraph No. 7 of Plaintiff's  
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1 Complaint except to admit that the plaintiff received a 2003 Facilities Management and Services  
2 Award of two hundred dollars, a Gold Hammer Award certificate in September 2003, a  
3 Certificate of Recognition on October 9, 2003 and that any letters of recognition and appreciation  
4 due to his service with FEMA must speak for themselves, and FEMA is without knowledge or  
5 information sufficient to form a belief as to the truth or falsity of the remaining allegations  
6 contained in paragraph No. 7.

7 9. Paragraph No. 8 of the Plaintiff's Complaint contains a statement of plaintiff's  
8 case and conclusions of law to which no answer is required and factual allegations. FEMA  
9 denies all of the allegations contained in paragraph No. 8 and subparagraphs a, b, c, d, e, f, g, h, i,  
10 j, k, and l of Plaintiff's Complaint, except to admit that between July 2004 and March 2005,  
11 Judith Reilly was the acting Section Chief of the Safety Section of the Safety and Security  
12 Branch, Facilities Management Division at FEMA-DHS and acted as the plaintiff's supervisor as  
13 indicated in the first sentence of paragraph No. 8.

14 10. Paragraph 9 of the Plaintiff's Complaint contains conclusions of law to which no  
15 response is required, and factual allegations. FEMA denies all allegations contained in paragraph  
16 No. 9.

17 11. Paragraph No. 10 of Plaintiff's Complaint contains conclusions of law to which no  
18 response is required and factual allegations. FEMA denies all allegations contained in paragraph  
19 No. 10.

20 12. Paragraph No. 11 of Plaintiff's Complaint contains conclusions of law, and  
21 damage claims to which no response is required; to the extent an answer is deemed necessary,  
22 FEMA denies all allegations contained in paragraph No. 11.

23 13. Paragraph No. 12 of Plaintiff's Complaint contains conclusions of law and damage  
24 claims to which no response is required and factual allegations. FEMA denies all allegations  
25 contained in paragraph No. 12.

26 14. In answer to paragraph No. 13, FEMA's information and belief is that Plaintiff  
27 initiated contact with the EEO Agent for FEMA on June 5, 2005. On that basis, FEMA denies  
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1 all allegations contained in paragraph No. 13.

2 15. FEMA denies all allegations contained in paragraph No. 14; except to admit that  
3 on September 2, 2005 FEMA's Office of Equal Rights notified the plaintiff of his right to file a  
4 formal complaint with the Equal Employment Opportunity Commission, and that the letter  
5 speaks for itself.

6 16. Paragraph No. 15 of Plaintiff's Complaint contains conclusions of law to which no  
7 answer is required; to the extent an answer is deemed necessary, FEMA denies the allegations  
8 except to admit that on or about September 8, 2005 the plaintiff's formal EEO complaint alleging  
9 discrimination was filed with FEMA's Office of Equal Rights, and the complaint speaks for  
10 itself.

11 17. Paragraph No. 16 of Plaintiff's Complaint contains conclusions of law to which no  
12 answer is required; to the extent an answer is deemed necessary, FEMA denies the allegations  
13 except to admit that more than 180 days have passed since the date that Mr. Wheeler filed his  
14 formal EEO complaint on September 8, 2005, and that the EEOC dismissed the plaintiff's EEO  
15 complaint on April 1, 2008, and that no appeal has been filed to the best of FEMA's knowledge.

16 18. Paragraph No. 17 of Plaintiff's Complaint contains conclusions of law to which no  
17 answer is required; to the extent an answer is deemed necessary, FEMA denies the allegations  
18 except to admit that in response to Mr. Wheeler's counsel's correspondence with the EEOC, the  
19 EEOC dismissed the plaintiff's EEO complaint on April 1, 2008, and that the papers must speak  
20 for themselves and that no appeal has been filed with the EEOC regarding the plaintiff's  
21 complaint to the best of FEMA's knowledge and information.

22 19. FEMA is without sufficient information to form a belief as to the truth or falsity  
23 of the first sentence of paragraph No. 18 of Plaintiff's Complaint, and the second sentence of  
24 paragraph No. 18 of Plaintiff's Complaint contains plaintiff's claims for relief and conclusions of  
25 law to which no answer is required; to the extent an answer is deemed necessary, FEMA denies  
26 all allegations.

27 20. Paragraph No. 19 of Plaintiff's Complaint under heading "Sex Discrimination -  
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1 Title VII of the Civil Rights Act of 1964" incorporates by reference all of the allegations in  
2 paragraphs 1 through 18 of Plaintiff's Complaint as if fully set forth therein. No answer is  
3 required to paragraph No. 19, but to the extent an answer may be required, FEMA incorporates  
4 by reference as if set forth fully herein, all of its responses to paragraphs numbered 1 through 18,  
5 including the second paragraph number 4, of Plaintiff's Complaint.

6 21. Paragraph No. 20 of Plaintiff's Complaint contains conclusions of law to which no  
7 answer is required; to the extent an answer is deemed necessary, FEMA denies all allegations  
8 contained in paragraph No. 20 of Plaintiff's Complaint.

9 22. Paragraph No. 21 of Plaintiff's Complaint contains conclusions of law to which no  
10 answer is required; to the extent an answer is deemed necessary, FEMA denies all allegations  
11 contained in paragraph No. 21 of Plaintiff's Complaint.

12 23. Paragraph No. 22 of Plaintiff's Complaint under heading "Age Discrimination -  
13 Age Discrimination in Employment Act of 1967" incorporates by reference all of the allegations  
14 in paragraphs 1 through 18 of Plaintiff's Complaint as if fully set forth therein. No answer is  
15 required to paragraph No. 22, but to the extent an answer may be required, FEMA incorporates  
16 by reference as if set forth fully herein, all of its responses to paragraphs numbered 1 through 18,  
17 including the second paragraph number 4, of Plaintiff's Complaint.

18 24. Paragraph No. 23 of Plaintiff's Complaint contains conclusions of law to which no  
19 answer is required; to the extent an answer is deemed necessary, FEMA denies all allegations  
20 contained in paragraph No. 23 of Plaintiff's complaint.

21 25. Paragraph No. 24 of Plaintiff's Complaint contains conclusions of law to which no  
22 answer is required; to the extent an answer is deemed necessary, FEMA denies all allegations  
23 contained in paragraph No. 24 of Plaintiff's Complaint.

24 26. Paragraph No. 25 of Plaintiff's Complaint under heading "Hostile Work  
25 Environment - Title VII of the Civil Rights Act of 1964 and Age Discrimination in Employment  
26 Act" incorporates by reference all of the allegations in paragraphs 1 through 24 of Plaintiff's  
27 Complaint as if fully set forth therein. No answer is required to paragraph No. 25, but to the  
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1 extent an answer may be required, FEMA incorporates by reference as if set forth fully herein, all  
2 of its responses to paragraphs numbered 1 through 24, including the second paragraph number 4,  
3 of Plaintiff's Complaint.

4 27. Paragraph No. 26 of Plaintiff's Complaint contain conclusions of law to which no  
5 answer is required; to the extent an answer is deemed necessary, FEMA denies all allegations  
6 contained in paragraph No. 26 of Plaintiff's Complaint.

7 28. Paragraph No. 27 of Plaintiff's Complaint contain conclusions of law to which no  
8 answer is required; to the extent an answer is deemed necessary, FEMA denies all allegations  
9 contained in paragraph No. 27 of Plaintiff's Complaint.

10 29. Paragraph No. 28 of Plaintiff's Complaint under heading "Reprisal - Title VII of  
11 the Civil Rights Act of 1964 and Age Discrimination in Employment Act of 1967" incorporates  
12 by reference all of the allegations in paragraphs 1 through 27 of Plaintiff's Complaint as if fully  
13 set forth therein. No answer is required to paragraph No. 28, but to the extent an answer may be  
14 required, FEMA incorporates by reference as if set forth fully herein, all of its responses to  
15 paragraphs numbered 1 through 28, including the second paragraph number 4, of Plaintiff's  
16 Complaint.

17 30. Paragraph No. 29 of Plaintiff's Complaint contains conclusions of law to which no  
18 answer is required; to the extent an answer is deemed necessary, FEMA denies all allegations  
19 contained in paragraph No. 29 of Plaintiff's Complaint.

20 31. Unnumbered paragraph beginning "Wherefore" contains conclusions of law, and  
21 the plaintiff's damage claims to which no answer is required; to the extent an answer is deemed  
22 necessary, FEMA denies all allegations contained in unnumbered paragraph beginning  
23 "Wherefore".

24 **FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff fails to state a claim upon which relief can be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 There is no jurisdiction under Title VII because Plaintiff failed to exhaust his  
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1 administrative remedies as most of Plaintiff's allegations were not timely raised during  
2 administrative proceedings.

3 Wherefore, FEMA requests:

- 4 1. A judgment dismissing Plaintiff's Complaint herein with prejudice and awarding  
5 FEMA's costs and disbursements in this action; and  
6 2. That Plaintiff take nothing in this action; and  
7 3. Such other and further relief as the Court may deem just and proper.

8 Respectfully submitted,

9 JOSEPH P. RUSSONIELLO  
10 United States Attorney

11 Dated: June 16, 2008

12 /s/  
NEILL T. TSENG  
Assistant United States Attorney